



U.S. Department of Justice

Immigration and Naturalization Service

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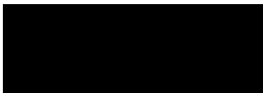
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 98 129 52945 Office: California Service Center Date:

AUG 30 2000

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Self-represented

Public Copy

Identifying data added to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

Linda Young, an immigration consultant who prepared the petition, asserts that the petitioner is "a famous medical researcher in the area of Internal Medicine in China with worldwide influence." The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through

evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner has won several municipal or provincial prizes, which by their nature are not national or international.

The International Association of Integrated Medicine presented the petitioner with the Los Angeles International Golden Award. The record contains no information about this organization, its size or prestige, or the extent to which awards from the association are recognized outside of that association.

The petitioner has received certificates recognizing some of his written work, but there is no indication that these certificates indicate nationally or internationally significant prizes. The "prizes" in some instances amount to publication of the papers in bound collections. Because publication of scholarly works falls under a separate category, below, that same publication cannot be considered to be a "prize" in any meaningful sense.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner documents his membership in the Chinese Medical Association of Nephrology and the Chinese Medical Association of Dermatology and Venereal Diseases, but the record contains no documentation to show that these associations require outstanding achievements of their members, as judged by recognized national or international experts.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Articles about the petitioner appear in various publications, but the petitioner offers no evidence to show that the publications qualify as "major media" as opposed to local publications, or minor

publications with limited circulation. Some of the publications are professional directories, with no indication of how certain individuals are selected for inclusion. Nothing distinguishes the petitioner from the hundreds of others listed in these books. Other publications appear to be local newspapers, containing "letters to the editor" endorsing the petitioner's medical practice.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner has developed medicinal products such as "Cap. Heal Kidney," "Heal Pudenda" and "Heal Pudenda and Skins." The petitioner holds several additional patents, not all of which clearly relate to medicine. For example, the translated name of one of the petitioner's patented inventions is "The Widely Usage and Carrying Thing Sheath for Preventing Things from Stealing." An invention is not necessarily a major contribution just because it has been patented. A patent reflects originality rather than major significance.

The petitioner has shown that he has invented a number of medicinal compounds, but he has not shown the significance of those compounds. The petitioner's own assertions as to the effectiveness of the medicines cannot suffice in this regard.

The record lacks confirmed clinical data to support many of the petitioner's claims. For instance, the petitioner claims that "Heal Pudenda" not only treats but actually prevents the contraction of sexually transmitted diseases. The petitioner does not identify which diseases the substance does or does not prevent; this information is critically relevant because some sexually transmitted diseases are fatal and incurable.

While some organizations have praised the petitioner's medicinal compounds, the record lacks evidence regarding those organizations. The record does not support the conclusion that China's medical community, on a national level, recognizes the petitioner as a major innovator.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner's publication of over 30 scholarly works satisfies this criterion, although we note the absence of evidence to show that the petitioner's output of published work significantly exceeds the usual output of researchers in his field.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Ms. Young claims that the petitioner has satisfied this criterion, but the record does not identify any distinguished organization or establishment for which the petitioner has played a leading or critical role. Ms. Young asserts that "exhibit H" of the petition documents falls under this criteria; but "exhibit H" concerns published materials about the petitioner, already addressed above.

The director requested additional evidence to show that the petitioner would continue to work in the same field of endeavor in the U.S.; that the petitioner's entry would substantially benefit the U.S.; and that the petitioner is at the top of his field, in comparison with others in that field.

In response, the petitioner submits documentation of a job offer from [REDACTED] California, which offered the petitioner \$60,000 per year as a researcher. The petitioner also submits copies of previously submitted evidence, even though the director had clearly considered such evidence to be insufficient to establish eligibility. The petitioner failed to explain why the duplicate submission should be any more persuasive than the initial submission.

The director denied the petition, asserting that while the petitioner has encountered some degree of success in his profession, the record does not demonstrate that the petitioner is among the best-known figures in his field, nationally or internationally.

On appeal, the petitioner argues that the petitioner submitted evidence to satisfy more than enough regulatory criteria. The petitioner does not elaborate. Many of the petitioner's submissions only superficially address the criteria; for instance, the petitioner documents his membership in associations, without demonstrating that the associations require outstanding achievements of their members.

The director correctly observed that the evidence submitted by the petitioner is subject to analysis and interpretation. The record, as a whole, must demonstrate that the petitioner enjoys national or international acclaim at the top of his field. The petitioner cannot simply define himself into eligibility by sorting his evidence into categories which mirror the regulatory language. Linda Young has claimed that the petitioner has "worldwide influence," but the record limits the petitioner's influence to China and some communities of Chinese immigrants.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physician or medical researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. The petitioner has not shown that his entry would substantially benefit prospectively the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.